

Message Text

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TO SECSTATE WASHDC 6911
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CONFIDENTIAL NEW DELHI 9796

E.O. 11652: GDS

TAGS: PINT, IN

SUBJ: PRESSURE ON THE COURTS

1. CONGEN BOMBAY HAS SENT US THE FOLLOWING MESSAGE:

"1. JUST BY CHANCE, KARNATAKA HIGH COURT JUSTICE D.M. CHANDRASHEKHAR, ONE OF THE 16 HIGH COURT JUDGES RECENTLY TRANSFERRED, ACCCOMPANIED HIS SON TO THE CONSULATE GENERAL JULY 1 TO INQUIRE ABOUT THE SON'S VISA. THE VISA SECTION ALERTED ME TO HIS PRESENCE IN THE BUILDING AND HE AND I MET ALONE FOR ABOUT FORTY-FIVE MINUTES.

2. JUSTICE CHANDRASHEKHAR INFORMED ME HE IS SCHEDULED TO DEPART FOR ALLAHABAD AND HIS NEW POST THERE ON JULY 2. WHEN I ASKED WHY HE THOUGHT HE WAS BEING TRANSFERRED, HE ANSWERED QUITE CANDIDLY THAT HIS TRANSFER WAS CONNECTED WITH A DECISION HE AND JUSTICE SADANANDASWAMY HAD HANDED DOWN IN A CASE INVOLVING HABEAS CORPUS WHICH HAS 'PREVIOUSLY DISPLEASED THE GOVERNMENT.'

3. CONTINUING, CHANDRASHEKHAR STATED THAT THE CASE INVOLVED JANA SANGH LEADER L.K. ADVANI, WHO WAS ARRESTED AND HELD IN DETENTION IN BANGALORE AND WHO HAD BEEN A CANDIDATE

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FOR REELECTION TO THE RAJYA SABHA IN THE RECENT

ELECTIONS. DESPITE THE FACT THAT HE WAS IN DETENTION, CHANDRASHEKHAR SAID, ADVANI WAS REELECTED, BUT TO RETAIN HIS SEAT, HE HAD TO GO TO DELHI TO TAKE HIS OATH AND SIGN HIS COMMISSION BEFORE THE VICE PRESIDENT OF INDIA. THE GOVERNMENT ORDERED THAT HE COULD NOT DO SO, WHICH WOULD HAVE DEPRIVED ADVANI OF HIS SEAT IN THE RAJYA SABHA AND ALL THE PERKS THAT GO WITH IT. ADVANI PETITIONED THE COURT TO ALLOW HIM TO GO AND CHANDRASHEKHAR AND SADANANDASWAMY HEARD THE CASE.

4. CHANDRASHEKHAR STATED THAT HE AND SADANANDASWAMY OBTAINED A COMMITMENT FROM ADVANI THAT HE WOULD NOT ENGAGE IN THE PROCEEDINGS OF THE RAJYA SABHA, AND WOULD IN FACT DO NOTHING IN NEW DELHI BUT TAKE HIS OATH OF OFFICE. UNDER THESE CONDITIONS THE JUSTICE SAID, HE AND SADANANDASWAMY HELD THAT ADVANI COULD GO TO DELHI UNDER POLICE ESCORT TO TAKE THE OATH. THE GOVERNMENT WAS UPSET BY THE DECISION, HE SAID, AND APPEALED TO THE SUPREME COURT. THE DECISION HAS NOT BEEN HANDED DOWN YET, HE SAID, AND ADVANI HAS IN EFFECT BEEN DENIED HIS SEAT.

5. THERE APPEARS TO BE NO DOUBT IN CHANDRASHEKHAR'S MIND THAT HIS TRANSFER IS THE DIRECT RESULT OF THE ADVANI DECISION. HE HAS BEEN A MEMBER OF THE KARNATAKA HIGH COURT FOR THIRTEEN YEARS, HE SAID, AND NEEDS ONLY SIX YEARS MORE FOR RETIREMENT. HE STATED THAT IT IS VERY DIFFICULT FOR HIM AT HIS AGE TO BE TRANSFERRED FROM BANGALORE, WHERE HE HAS LIVED MOST OF HIS LIFE, TO ALLAHABAD. (AS AN ASIDE, HE INDICATED THAT HE LIVES IN HIS OWN HOME IN BANGALORE, WHILE HOUSING IN QUITE DIFFICULT IN ALLAHABAD.) IN SORT, THAT HE REGARDS HIS TRANSFER AS PUNISHMENT FOR HIS DECISION SEEMS CLEAR.

6. CHANDRASHEKHAR SAID THAT 'MOST' OF THE SIXTEEN JUSTICES BEING TRANSFERRED HAVE TAKEN DECISIONS AGAINST THE GOVERNMENT OF INDIA IN 'PRESTIGIOUS CASES.' IN HIS WORDS, THE GOVERNMENT OF INDIA 'HAS DECLARED OPEN WARFARE ON THE JUDICIARY,' AND HE BELIEVES THE INDIAN JUDICIARY WILL BE IN FOR 'A HARD TIME OVER THE NEXT FOUR OR FIVE YEARS.' HE IS OF THE OPINION THAT THE GOVERNMENT WANTS A TOOTHLESS

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JUDICIARY, AND HE STATED THAT DELHI WANTS TO MAKE APPOINTMENTS TO THE HIGH COURTS DIRECTLY WITHOUT CONSULTING THE STATES. HE DID NOT OFFER ANY OPINION WHAT THE GOVERNMENT'S NEXT STEP MIGHT BE BUT FURTHER CURBS ON THE JUDICIARY OBVIOUSLY WOULD NOT SURPRISE HIM."

2. IN FURTHER CONVERSATIONS IN DELHI WITH VICE CHAIRMAN (MURAHARI) AND SECRETARY GENERAL (BHALERAO) OF RAJYA SABHA,

POLCOUNSELOR CONFIRMED THAT ADVANI AS WELL AS JANA
SANGH GENERAL SECRETARY BHANDARI (ALSO UNDER DETENTION)
HAVE NOT TAKE THEIR OATHS AS MP'S AND THAT ADVANI'S CASE
IS PENDING BEFORE THE SUPREME COURT (CURRENTLY IN ITS
SUMMER RECESS). THE GOVERNMENT IS CONSIDERING CHANGING
THE "RULES" GOVERNING PAYMENT OF SALARIES AND PROVISION
OF HOUSING FOR MP'S TO PERMIT THESE TO BE FURNISHED MP'S
EVEN IF THEY HAVE NOT TAKEN THE OATH OF OFFICE. A BILL
TO THIS EFFECT WILL PROBABLY BE SUBMITTED AND PAST DURING
THE AUGUST PARLIAMENTARY SESSION. THE GOVERNMENT HOPES THIS
WILL REENFORCE ITS CASE AGAINST ALLOWING ADVANI (OR
THE OTHERS) TO COME TO DELHI. IN FACT, THE LAW CURRENTLY
WOULD PERMIT THE GOVERNMENT (WITH PRESIDENTIAL ASSENT) TO
ALLOW ADVANI TO BE SWORN IN EVEN IN JAIL. BUT THIS WILL
NOT BE DONE.

SCHNEIDER

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